

DEPARTMENT OF STATE REVENUE

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LETTER OF FINDINGS NUMBER: 97-0281 ST

Sales and Use Tax

For The Tax Periods: 1993 through 1995

NOTICE: Under Indiana Code 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Departments official position concerning a specific issue.

ISSUE

I. Use Tax – General Purchases

Authority: IC 6-2.5-3-2, 45 IAC 2.2-3-4

The taxpayer protests the assessment of use tax on items not used in the normal course of business.

STATEMENT OF FACTS

Taxpayer is an Indiana Corporation incorporated in 1994 and is in the business of selling and installing heat and smoke alarm systems. Prior to 1994 the taxpayer did business as a sole proprietorship. The business incorporated in 1994 but the taxpayer failed to register the new entity as a retail merchant. The taxpayer has been advised to register but continues to remit sales tax under the sole proprietorship number.

Taxpayer believes specific items are not used nor consumed in the normal course of business, therefore, exempt from sales tax.

I. Use Tax – Items not used or consumed in the normal course of business.

DISCUSSION

At issue is whether the taxpayer's purchases of various items is subject to tax.

Taxpayer states, in a letter dated July 2, 1997, that specific items are not used and consumed in the normal course of business and should not be assessed tax according to regulation 45 IAC 2.2-3-4. Taxpayer has provided a copy of the use tax assessment pages six through nine circling the items to which it disagrees.

The items circled indicate a protest on subscriptions, office supplies, plaques & trophies, jewelry, handbooks, literature & supplies, sound projections, warranty cards, stickers, dinners at restaurants, and miscellaneous. These items are not resold but are given away as gifts during presentation of the smoke and heat alarm system or are consumed in taxpayer's normal course of business.

45 IAC 2.2-3-4 that the taxpayer refers to states:

Tangible personal property, purchased in Indiana, or elsewhere in a retail transaction, and stored, used, or otherwise consumed in Indiana is subject to Indiana use tax for such property, unless the Indiana state gross retail tax has been collected at the point of purchase.

The taxpayer did not pay tax at point of purchase nor did he resell the items that were included in the audit. These items are posted to the taxpayer's expense accounts and not the sales account.

FINDING

Taxpayer's protest is denied.